

## Chapter four,

ethics and public contracting. We're gonna talk about conflicts of interests, gratuities, kickbacks and use of confidential information and sanctions for ethical violations. Introduction. Ethics is one major primary reason for establishing clear procurement rules. We must ensure fair and competitive business practices, ensuring that everybody gets a chance at what we're putting out there to receive costs on. Now remember, Mike, should we do that for all micro thresholds? Well, maybe not every time. But for micro purchases many times, we used to move them around to different people. Why? So that they, different people would get, you know, get a chance. Yeah. And by the way, getting vendors interested in you sometimes makes it more competitive when you do actual quotes and bids. Of course it does, okay. Cost efficiencies. I sometimes go to work for housing authorities and we do a quote for something and I show them how to do it, and then suddenly they go, "Oh my gosh, look at those prices from all the quoters." And I go, "Right." And they go, "But my former vendor was telling me "he or she was giving me the best cost "anybody could ever get for this." And I go, "Yeah, that's not correct, is it?" They go, "No, they lied." And I go, "No, they didn't, they puffed." That's called puffing, right? "Well, I'm not going to do work with them." Why, you're the one who made the mistake of buying without bids, without competition before. Why would you take it out on the vendor? Did they give you good product? Yes. Did they fulfill all their requirements? Yes. Well don't take it out on them. You're the one who has to do the competitions to ensure that you're getting the- My best example was a housing authority in Illinois where she was getting, she wanted to argue with me because she was getting the absolute best price and she had checked that price against the Internet. Now y'all know that Internet pricing is puffing, right? You could always get a better price by contacting them and letting them know you're taking quotes. Well, she was paying \$18,000 per HVAC unit, and with the bid, they were \$12,000.

That's quite a bit of savings, isn't it? And by the way, the person who she was buying them for at 18, when she got the quotes in, they had raised their price to \$19,000, and they were last. Why did they raise their price? 'Cause they didn't understand that it was going to the lowest cost even though we said it because he couldn't believe that she would buy these from somebody else. He couldn't believe he'd been selling them to her for years and by the way, after the bid, he wanted to protest. "I can't believe you went to somebody else. "You don't even know them. "I go to rotary with you, "I go to the chamber of commerce with you." That's just somebody- You know, we're laughing, but, I'm ringing, there's ringing some bells here, yes there is. And when you establish ethics you avoid the appearance of impropriety. Conflict of interest involves situations where a person is in a position to derive personal benefit from the procurement. What does it look like? Well, here it is. Conflicts of interest. The PHA director's brother is a door vendor and bids on a PHA solicitation for doors. Can the executive director's brother bid? No, you know why?

Because the executive director is the contracting officer and it is impossible for them to remove themselves from the process, because one of the things they do is sign checks. So therefore he can't. However, what is your first name? - [Audience Member] Olga. - [Instructor] Oka? - [Audience Member] Olga. - [Instructor] Olga. I'm hard of hearing, especially with the hurricane up here. (audience laughs) So here we go, Olga. You work in the housing choice voucher department. I'm just gonna say that. And your brother installs doors. Can your brother bid on the bid? The answer is yes. Her brother can bid on the bid because she has nothing to- There you go, see it just- Bingo, here you go, let's have a bingo. It just hit her. I have nothing to do with the doors. Now Olga, let me tell you something. If your brother does bid on the doors, don't you ever ask anybody about that bid because now you're interfering with the process, okay? Here's the other thing. Olga, if your brother bids, I want you to write an email to the

executive director saying, you know, "I work in housing choice voucher, "in case you don't remember me, "and my brother's bidding on those doors. "I'll just stay completely away from the process. "I won't even talk to my brother about this process." That's what you wanna do. 'Cause let me tell you what I have, Olga. I've had my buyers come in and say to me, 'cause I had four buyers, I mean I had 400 employees. We were generating a lot of paperwork. Here we go. So-and-so just called and asked us how that bid is going from the housing programs department, and I said, we call them and said "Why" and they go, "Oh, my brother just asked." Yeah, that's happened many times to me. I retrained all the staff. Don't ever ask about any process, yeah. Maintenance director owns stock in a company that sells a particular type of stove and recommends to the PHA that all units should be equipped with that stove. Is that good or bad? Bad, yeah. That's a big duh, isn't it? Contract administrator. Uh, your name is? - [Audience Member] Willy. - [Instructor] Willy? Willy needs his home bathroom remodeled and asks a contractor working on the PHA projects to do work at a discounted price. Is that a violation? - [Audience] Yes. - [Instructor] Yeah. However, if you take quotes and you allow them to quote, they can do work on it. Just remember though, there's the appearance of impropriety though not the actual violation. I know because I built a house once, I had eight kids, I built a house, saved my money, bought some land, built a house. And I took quotes for everything that everybody did on my house. And I had a great contract management file personally. However, during a particular difficult time, the FBI investigated me for the appearance of impropriety.

Now, they can't convict me for the appearance. But they said, "Let me see all your documentation." And I gave it to them and they cleared me because I had quotes for everything personally with my house but just the appearance of the impropriety did cause a problem even though there was no violation. Just be aware that if you do business with people, do work for the housing authority, it could, somebody could say something about it. Property manager quits her job to become a public housing consultant. Later, within a year, six months later, she responds to the PHA's RFP for consulting and is awarded the contract. Is that appropriate? No, because there is a one year grace period. She cannot do that. I wanna give you an example. There's another housing authority in Illinois who several years ago, their housing choice voucher inspector, is that UPCS? Housing choice voucher, the voucher program? Their inspector retired, so what are they gonna do? They said, "Well instead of hiring a new employee, "Let's just do a quote and hire somebody to do it." And three months after he retired, he responded to this quote and was awarded the contract. That is a violation. So what happened was, the OIG came in, over that was the impetus of the investigation, and they gave them a finding that they inappropriately awarded a contract prior to the year grace period. Is everybody with me on that? So they had paid him \$14,000 to do these inspections. Okay, so much per inspection. So you would have thought that the OIG would have said, "You have to pay that money back." No, the OIG seized all of their housing choice voucher funds for one year. Millions, over a million dollars.

And they were required to pay that back, which to this date they never have because they don't have the money. The executive director also recently left. Are you hearing me? John brought it up earlier. There is a consequence when you don't follow the rules. I frankly believe the OIG was way too aggressive. And I told them and they told me, "I don't care." (laughing) However, they can do what they want. My opinion or your opinion doesn't matter. So stay with the ethics rules. Be careful. Right here, Lee. - [Audience Member] How did the OIG find out about it? - Oh I'm, okay, the question is, how did the OIG find out? I don't know but I do know, and are you ready? EDs, listen to me carefully. Somebody always talks. (laughing) You, if you're doing something wrong, you cannot expect folks, and now I'm talking to staff too, for other people to support you in what you've done wrong. Especially if you tick them off in

something else, you know what I mean? But I'm not going to be upset about that they reported it. It was wrong. Yeah, yeah I came in after that and I told them, "Well, this is all wrong." And they said, "Well, our attorney says it's not." And I go, "Yeah, well your attorney can go "for a lot of years defending you on this issue, "saying it's not wrong, "and the only thing that's gonna happen is, "you're gonna pay more attorney bills." Boy, was the attorney ticked when I said that. He was sitting right there. I said, "You were wrong. "It's indefensible, what do you want? "You hired him within the one year grace period. "You can't do that unless you get prior HUD approval, "which I have received from my field office." Several things where I turned it in in the year and they said okay. I once had an executive director leave and we needed, he retired completely and we needed him to be available to the new ED and HUD said, "Yeah, we'll give you a six month grace on that." Why? Because the HUD knew the issues. HUD can do that. Right, you guys know that, right? You can give those- But it's gotta be for a good reason. Something that benefits the people, which includes our residents. What is the rule? Conflicts of interest. No PHA employee officer or agent shall participate in the selection or award or administration of any contract supported by federal funds if a conflict of interest, financial or otherwise, exists, real or apparent.

Remember I told you, Lee, about that, that mine was apparent? Yeah. In fact, I broke a rule once. No, no, no, no. I was young, no. This rule was pretty serious. I had a tractor that I had bought for my own personal lawn care company and I was just barely started working at the authority and I paid \$10,000 for this tractor, then the contract fell out and I could never do it. About a year later the housing authority bought it from me for what I paid for it, oh yeah. Listen, I was new, I didn't know this was wrong. My ED should have known. And we were doing bids for tractors and they were now costing about 7, 8,000 more and the boss says, "Okay, I'll give you the cost "what you paid for that. "I'll save the 7, 8,000." Somebody talked. (laughing) And the OIG came in and they went back to the HUD office. They were going to move for an indictment and the, I got off lucky. The attorney said, "So you want me to indict him "for saving 6, \$8,000?" (laughing) Instead, I got reprimanded. So did the ED. You won't be as that lucky. Boy, was I lucky. And by the way, that was a violation of ignorance rather than that I was trying to make money 'cause I could have sold the tractor for more other places. Yeah. A one year grace period, one year grace period. They cannot into anything within one year of entering. Now remember, employees that go work for a contractor cannot work on our stuff for a year, but a contractor who works for us can work on that former contractor's work. Do you see what I mean? It does not go both ways. Yeah. Although, does it look like maybe an apparent conflict? If I hire somebody from a contractor and they work on my site, and they're now, that person gets a bid, would that maybe look like an apparent conflict? 'Cause maybe he or she would not be as rough on that contractor as they need to be? Yeah, whenever we hired somebody away, we did not put them for quite a while on any jobs with that other contractor. We avoided doing that 'cause it was an apparent conflict, not a real conflict. Everybody with me? Okay. No immediate family of staff of PHA can do business with the PHA if that conflict appears, remember Olga? But remember, yours would still be an apparent conflict. Gratuities. Stuff that we get of monetary value. I had an executive director call me recently. How many of you buy insurance through your state association or a risk management group? Yeah, a number of you do, yeah. And there's HARRG, Housing Authority Risk Retention Group. You know, there's a number of those groups that are competitive bid exceptions. It's on my website under notices issued and I issued that notice with the link to the HUD website where you can see. But what is your local, what, in New Mexico, who is it? Okay, the state one? And you in Texas, you have TML. That is listed on that list, okay. And typically speaking, the prices with those risk management groups are really better than private industry pricing.

Typically speaking, not in every single case, but that's very typical. So, this lady in Florida, this ED, was being bugged by the cousin of the mayor, who she was beholden to all the time, right? And her cousin wanted her to do an RFP. What she did was, and this is what I would tell you to do, she checked his pricing out and compared it what she paying with the Florida association insurance, and his costs were 50% higher. So should she go ahead and do an RFP? No, it's a waste of time. She's already verified the appropriateness of the pricing. Now if they were very close, I might say to her, "You might need to do an RFP." But they weren't, they were dramatically different. But he kept bugging her and bugging her and bugging her. And I told her, "Beware, he's talking to his mayor, "the mayor, his cousin." She goes, "Well, the mayor stands behind me." So then she called me some months later and says, "Mike, he's at it again. "I was talking with him at lunch the other day-" I said, "Hold on, what do you mean at lunch?" She goes, "Yeah, we went to lunch together." "Oh really? Who paid?" She said, "Mike, get off of it. "Don't be so obsessed about things. "I went to Subway and he bought me a \$4 sandwich. "Are you telling me that's a problem?" And I said, "Well, my problem with that is is that you're so cheap." (audience laughing) "I mean, if you're gonna get bought, "why not go to Ruth Chris and get \$150 lunch? "Because the penalty is the same. "It looks really, really bad." See, it doesn't matter the cost. I said, "And I guarantee you he's telling the mayor "that he's wining and dining you "and you still won't do an RFP, "all you'll do is eat his food." She went to the mayor. The mayor said, "Yeah, you know, he has said that." First of all, don't go to lunch with contractors. Secondly, if you go, pay yourself for your own meal and pay with a credit card so that you have proof, because remember, a receipt is not proof of anything. I can pick up receipts out of the parking lot. My boss taught me, "Pay with your credit card, "that way you have absolute proof "you paid for your own meal." But he said, "What would be even better is don't even-" (static drowns out speech) By the way, we have a lot of non-aided funds and when people just insisted they wanted to talk with me during lunch, they didn't have any other time, I had sandwiches brought in and I had a sandwich there for them. Non-aided funds are non-profit, and that way we didn't have to worry about who paid. Okay? It could be that meal could be looked at as a gratuity or even a kickback. Okay, confidential information. What is confidential? Here we go. The content of a quote, bid or proposal prior to the submittal deadline. Sometimes vendors- Are you with me? Sometimes contractors want you to open quotes and bids to get information from them to give them. (laughing) Don't. I mean I guess that's good work if you can get it, but don't. Yeah, yeah.

Your ICE must not be disclosed. Your independent cost estimate must not be disclosed because it would give them a target. However, what if you're doing a lawn cutting bid and they say, "How much are you paying "your current contractor?" Do you have to disclose that? The answer is yes. Even though your ICE is based on that, you have to disclose- The public is entitled to know what you are paying right now. That is public knowledge, yes. Any other information might be confidential if the disclosure would have a direct effect, bearing upon the contract award or the competitive process. Things like, who the evaluators are, who oversees the contract. People, remember, this is all called industrial espionage. It's how people build themselves legally a better price. And they might want to go out onto the sites and talk to those people, to find out what their concerns are. Why that's inappropriate is, is because anything said to one bidder, potential bidder, or proposer, and not said to everybody else at the same time is a conflict. It's confidential information until you put it out to everybody. We'll talk about that more. Prohibition against contingent fees. It's prohibited for a person to be hired or solicited to secure a PHA contract pursuant to the promise of a commission percentage or brokerage fee. Somebody cannot say, now (static drowns out speech) But if you did discover that during the process, you would have to tell them, your attorney would need to write them a note and say, "That's a violation." But somebody, I once had a person come to me and say, "Okay Mike, I'm going to bring you lots of bidders, and if any one of my bidders win the bid,

you have to give me one quarter of 1% of the contract price as a fee." That's a contingent fee and it is not allowed. I just tell them no, no. Yeah. They cannot even technically do that with the contractor, saying that if I respond to this bid for you, you have to give me a percentage of the award. They can't, though I don't know how you would ever know if they did unless they told you so. Sanctions. The board and the policy establishes sanctions, okay, for violations of these issues. You must enforce all state and local laws, make sure that you check your state and local- You know what my clients do is they have a three-ringed binder at the desk and anytime they find a local law that applies to their process, they print that page, highlight it and they put it in the file. It's called a resource center.